Special Article

PROBLEMS OF ENFORCEMENT OF THE MEDICAL ACT.

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Perusal of correspondence as well as conversation with various practicing physicians of California discloses a surprising paucity of knowledge (1) regarding the operation of the investigation and legal departments of the Board of Medical Examiners and (2) regarding the difficulties encountered in their endeavors to discourage violations of the Medical Practice Act.

The question is frequently asked: "Why the necessity of the enforcement machinery of the Board when each county provides a District Attorney whose principal function is to prosecute individuals who are charged with violation of the law?" Experience has taught the truth of the adage: "What is every one's business is no one's business," and we have also learned that satisfactory prosecution of a charge of violation of the Medical Act demands the services of an attorney well versed in the medical law; hence the Legal and Investigation Department is requisite for enforcement.

Practically every state board is confronted with the problem of enforcement, although but few are in the fortunate position enjoyed by the California Board, thanks to the annual tax, which in addition to providing funds for compilation and publication of the annual directory, affords a goodly sum which may be devoted to the encouragement of a wholesome respect for the law.

The Legal and Investigation Department of the Board has grown during the past few years, from a force of four individuals to one of practically ten individuals, who without one penny drawn from the revenue of the state, are devoting conscientious effort to discourage violation and encourage compliance with the law. The area of this great state of ours is an added obstacle to the problem of enforcement, in that our attorneys and special agents are kept busy jumping from one community to another separated by many miles.

When the present Board of Examiners was organized, efficiency of operation of the Enforcement Department required that the state be divided by an imaginary line extending from the Nevada border westward through the city of Fresno, and thence southwest through the city of San Luis Obispo.

The jurisdiction of the Northern Department extends northward from the imaginary line just mentioned, to the Oregon line, while the district south of said imaginary line is covered by the Southern Legal and Investigation Department, with headquarters at Los Angeles; however, in case of emergency, one or the other department may be delegated to extend its base of operation. Each departmental office maintains a carefully devised system of card records, reports, etc., which not only assure efficiency of operation, but also provides that an accurate check on the operations of both departments is maintained in the office of the Secretary of the Board.

On receipt of information that a specific individual is alleged to be violating the Medical Act, evidence must be obtained to substantiate the allegation to the satisfaction of a court at law. In addition to equipment, etc., required for presentation as corroborative evidence, the court demands the testimony of one, two or more witnesses who, having been treated by the accused, will testify that the alleged violator has treated, diagnosed or otherwise violated Section 17 of the Medical Act.

Satisfactory evidence of alleged violation having been secured by the special agent of the Board, the facts are submitted to the local authorities, on whom dependence must be placed for the issuance of a warrant for arrest. Should the local authorities be "lukewarm," it sometimes happens that a warrant is refused based on a claim of "insufficient evidence," and thus the efforts of the special agents are nullified. Should the authorities issue a warrant for the arrest of a specific violator, the special agent for the Board must rely for service of said warrant, upon a police officer, deputy sheriff or constable, depending upon whether the warrant has been issued in a municipality of the first, second or third class.

The special agent of the Board, under existing conditions, is compelled to await the pleasure of the local authorities. In a city not far distant from San Francisco, the special agent in one instance was compelled to devote practically forty-eight hours, marked by frequent trips to "Headquarters," before the local Police Department deigned to furnish an arresting officer. This inhibitory influence to the efficiency of our efforts has arisen through failure of the legislature to provide that special agents of the Board of Medical Examiners be peace officers.

It is urgently desirable that this inhibitory influence be removed by an amendment to Section 817 of the Penal Code, specifying therein that special agents of the Board of Medical Examiners be peace officers just the same as now are the inspectors for the State Board of Pharmacy.

Following the arrest of an individual charged with violation of the Medical Act, a representative of the Board must be present in court when the accused "pleads." If the accused acknowledges violation by entering a plea of guilty, the duties of the Board's representatives cease as far as this particular violation is concerned. Should a plea of *not guilty* be entered by the accused, the next step is the arraignment as well as the setting of the date for trial, which again requires the attendance of the Board's representative. Despite the determination of a date for trial, the case is invariably "put over," with perchance a dozen different dates sequentially set, and in some instances, several months elapse before the case is finally heard in the Justice or Police Court. Pause to estimate the lost motion to the Board's enforcement machine caused by each delay. Thoughtfully consider the added expense to the Board, for our attorney, special agent and witnesses must

be ready for trial on each date set unless they be armed with prior knowledge that the case will *again* be put over.

This system of repeated delays is a ruse frequently used by opposing attorneys, who realize that the longer the trial be delayed, the greater are the possibilities through disappearance of witnesses, that the case will be "killed" as far as a successful prosecution by the Board's attorneys is concerned.

This same scheme of oft-repeated delays by postponement of the date of trial is followed in the instance of a flagrant violation which has strongly aroused public sentiment. The attorneys for the accused, familiar with psychology of the masses, realize that the hand of time rapidly effaces the facts in connection with the crime; hence the chance of conviction fades progressively more and more rapidly as time goes on.

But there is an end to all things, and the case finally comes up for trial before a Justice of the Peace in the smaller communities, or before a Police Judge in cities other than Los Angeles and Oakland. As the result of this proceeding, known as a Preliminary Hearing, the accused is either dismissed or held for trial in the Superior Court at a date subject to the same delays and postponements as already noted.

After conviction by a jury in the police courts of Oakland or Los Angeles, appeal from the judgment of conviction may be taken to the Superior Court, and if reversed, the subsequent trial is held in the Superior Court.

In a municipality where a jury is selected for each police court trial, the success or failure of a prosecution is practically in the hands of the municipal officer, who drafts the venire of jurymen.

The medical profession may be interested to know that it is not an uncommon practice for certain municipal law enforcement officers to maintain a complete card index of prospective jurors, wherein is entered a specific history of each individual, particularly: (a) Information regarding his habits and his associates; (b) How he may be "influenced"; (c) Whether he has established a reputation in former trials as an *"acquittor"* or as a *"convictor."* A recent scandal in the Superior Courts of San Francisco afforded the Public a clear insight into ways that are "dark, devious and mysterious" in the act of properly (?) selecting a jury presumed to minister justice without fear or influence.

The Northern Department at the present time has forty-one cases pending in the various counties of their jurisdiction. A strenuous endeavor is ever operative so the hearings of these various cases may be expeditiously arranged with the least possible loss of time to our Department, and at a minimum of expense, which under most favorable circumstances, is quite heavy.

The calendar of the superior court of jurisdiction finally affords an opportunity for commencement of trial, and *again* our attorney, special agent and witnesses must be in constant attendance. One, two or three days are required for completion of the trial, and the Board finds added to the expense of transportation, per diem, etc., an additional amount for hotel and incidental expenses which progressively increase as the trial is prolonged.

The per diem and mileage of jurymen as well as the other costs of trial must be assumed by the county wherein the trial is held. In a sparsely populated county, the cost of impaneling a jury for the trial of a case, is much heavier than in the large centers of population.

Should the Superior Court jury bring in a verdict of guilty and the trial judge impose a fine, 25 per cent. of said fine is retained by the county and 75 per cent. is paid to the State Treasurer to be credited to the Board of Medical Examiners' Contingent Fund. Statistics show that neither the expenses incurred by the Board nor by the county wherein the trial is conducted, are balanced by the imposition of a fine.

The income from fines is small as compared with the cost of enforcement. During the period of January 1, 1920, to November 22, 1920, the receipts of the Board from fines amounted to $7,087.50, while the expense of enforcement amounted to $17,003.15.

The State Treasury is not burdened with the expenses of the Board, which is supported entirely from fees earned; hence the taxpayer of California is not called upon for funds to finance the Board of Medical Examiners.

It is self-evident that a violator on whom a fine has been imposed, with an alternative jail sentence, labors under a misapprehension when he presents the argument that his election to serve the jail sentence rather than pay the fine, will in any manner inhibit the prosecution of those accused of violation of the law, inasmuch as the Board will continue the enforcement of the law regardless of incomes from fines. The present Board has always endeavored to convince a trial judge that the object of prosecution was to compel respect for the law rather than to augment the funds of the Board by "fines" imposed following conviction of a charge of violation of the Medical Act.

A violator is frequently placed on probation following conviction, with the understanding that he is in no way to engage in practice, nor to advertise or in any other manner violate the terms of his probation. Occasionally such an individual will thereafter claim his practice has been sold to another violator, although: (a) the same type of advertising appears in the daily papers mentioning the name of the probationer over the name of the alleged purchaser, in a manner calculated to convey the impression that the probationer was still conducting the business; (b) the probationer is daily to be found in his former office, personally accepting fees for treatments given by the alleged purchaser.

Some time ago, a chiropractor in Los Angeles, whose classically malevolent advertisements attacked the Board and breathed fiery defiance to law, was found guilty of violation of the Medical Practice Act, sentenced to pay a fine of $500.00 with a 180-day jail sentence suspended pending cessation of practice, and still this violator's name appears in advertisements published by at least

one of the Los Angeles daily papers. Wherein lies the fault? With the courts, for permitting this defiance to the court to go unchallenged or with the paper that publishes the advertisement of a convicted violator. Certainly the Board of Medical Examiners have done their work well in convicting said individual of violating the state law.

A convicted violator who appeals from the judgment of conviction has the same legal status as one who has *not* been found guilty.

It will not be amiss in this article to explain the status of a licentiate whose license has been revoked. Neither professional men nor laymen can comprehend how any legal action against the Board for a review or similar action, grants to said licentiate the 'right to go serenely on with his practice as though no action had been taken against him.

The individual, whose license has been revoked, has recourse in the Superior Court to a Writ of Review or Certiorari, usually accompanied by a Restraining Order served on the Board, which suspends the Board's order of revocation or any other activities in relation to the particular case. During the pendency of a writ, the "hands" of the Board are tied, the petitioner can practice "right merrily," and the Board can take no action:

(a) to stop said licentiate based on the revocation;
(b) to serve the County Clerk with a notice of revocation;
(c) to leave the petitioner's name out of the Directory;
(d) to refuse acceptance of the annual tax;
(e) to take any steps which in any way would reflect on the petitioner's standing as a legalized practitioner in the State of California.

After the Superior Court has reviewed the findings of the Board, an appeal is made to the Supreme Court, which refers the case back to the Appellate Court for an opinion. If the opinion be unfavorable to the appellant, a rehearing is requested. If said rehearing is denied, an appeal is filed with the Supreme Court.

If the Supreme Court sustains the action of the Board, the case is closed. However, should the action of the Board be reversed, the losing party may again ask for a rehearing, this time in the Supreme Court.

It does not require any very keen perception, after reviewing these various steps, to determine why these cases drag through a period of from two to three years before a final decision has been reached.

The vote of the people on medical and public health matters, as recorded on November 2, 1920, is an encouraging indication that the public still has faith in scientific medicine, and is a further indication that the medical profession has awakened from its lethargy to the full realization of the tremendous latent power that can be aroused by organization, exercising well directed effort. Legislators as well as municipal officers have often stated that the medical profession has not as yet awakened to the realization of its latent power, but when once aroused to concerted action, its power of accomplishment is limitless.

Let us summarize the avenues open to accomplishments by *concerted action:*

(1) Exercise of legislative contact in your home district.
(2) Exercise of personal contact with the editorial staff of the newspapers published in your community to:
  (a) discourage acceptance of advertisements of individuals who are violating the law;
  (b) to change the policy adopted by many papers that paid advertising insures editorial support regardless of the merit or truth of statements in said advertisements;
  (c) to grant the courtesy of reply in their columns to any article printed therein, which willfully misrepresents, or has a tendency to imply the existence of conditions in relation to scientific education, public health or law enforcement unfounded on fact.
(3) Personal contact with the law enforcement machinery of your community that it may be impressed with the justice of your plead for:
  (a) More expeditious disposition of cases involving violation of the Medical Practice Act.
  (b) Closer scrutiny in the selection of prospective jurymen.
(4) Personal contact with the public, both individually and collectively, disseminating the truths regarding public health measures, prophylaxis, preventive medicine, medical education and regulation.

The foes are legion that seek to destroy the safeguards to public health, erected by scientific medicine after years of heroic struggle. The attack is not only local, but has assumed a nation-wide well-financed campaign.

What will the harvest be?

The answer lies with *YOU.*

Original Articles

THE PRESENT NURSING SITUATION.*

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During the past half century the practice of medicine under the stimulus of such epochal development as has come through the great discoveries of bacteriology, pathology, chemistry, pharmacology, physics and the other branches of true science, has undergone a complete metamorphosis. No longer can the untrained herb doctor or bone setter visit a sick person, feel his pulse, look at his tongue, and after dispensing some empyrical mixture of herbs or mineral compound or "set" a supposedly dislocated or broken bone, depart with a consciousness of having done any real service to his patient.

* Read before the Forty-ninth Annual Meeting of the Medical Society of the State of California, Santa Barbara, May, 1920.